IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.353 OF 2005

Smt.Madhuri M.Ajgaonkar & Anr. ...Applicants
vs.
The State of Maharashtra
through Jogeshwari Police Station
Mumbai ...Respondent

Mr.A.G.Sabnis i/b Mr.P.G.Karande for the Applicants
Ms S.D.Shinde,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 28,2005

JUDGMENT:

1. By this Revision Application the Applicants who are the accused have challenged the order dated 6th October 2005 passed by the learned Additional Sessions Judge, Mumbai by which the charge framed against the Applicants was altered.

2. The Applicants are being prosecuted for offences punishable under Sections 498-A, 304-B and 306 of the Indian Penal Code (hereinafter referred to as IPC) read with Section 3 and 4 of the Dowry Prohibition Act, 1961. The Applicant no.2 is the husband of the deceased Jayshree and the Applicant No.1 is the mother-in-law of the deceased. Initially, the charge was framed on 1st August 2002 by the learned Additional Sessions Judge stating therein that the Applicants between the period from July 1990 to 23rd November 1990 at the matrimonial home of the deceased Jayshree caused physical and mental cruelty to the deceased by frequent assault and abuses with a

view to coerce her to meet unlawful demands of money from her parental house. By the order impugned in this Revision Application by exercising power under Section 216 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code), the said charge framed under Section 498-A was altered by mentioning therein that from 31st December 1988 to 23rd November 1990 the Applicants in furtherance of their common intention subjected the deceased Jayshree to cruelty by wilful conduct which was of such nature as is likely to drive the said Jayshree to commit suicide. The learned Additional Sessions Judge by the impugned order directed that in view of the provisions of Section 217 of the said Code, the prosecution and the defence are permitted to recall, examine and cross examine the witnesses on the altered charge.

3. The learned Senior Counsel appearing for the Applicants submitted that the order impugned has been passed after recording of the evidence at the stage of delivery of the Judgment. He submitted that by passing impugned order after conclusion of final arguments, prejudice has been caused to the Applicants. He submitted that in view of the directions given by the impugned order, the prosecution will get an opportunity to fill up lacuna in the case by leading additional evidence. He submitted that there was no material available for altering the charge as the allegations made in the evidence of commission of offence under Section 498-A

relate only to the period from July 1990 till 23rd November 1990. He submitted that there was no material for altering the charge. He submitted that Section 34 could not have been invoked. Relying upon the decision of the Division Bench of this Court reported in 1999 Cr.L.J. page 196 (State of Maharashtra Vs. Ramdas Shankar Kurlekar and another) he submitted that alteration of charge which is likely to prejudice the accused was not permissible. The learned A.P.P. supported the impugned Judgment and Order by pointing out the material on record.

4. I have considered the submissions. From the language of Section 216 of the said Code, it is crystal clear that the Court has power to alter or add to any charge at any time before the Judgment is pronounced. Thus, the power under Section 216 can be exercised even after conclusion of the final arguments. The charge which was originally framed under Section 498-A of the IPC read thus :

> "**Firstly**: That both of you accused above-named between the period from July, 1990 till 23/11/1990 at the matrimonial house of Smt.Jayshree Sharad Ajgaonkar at Dave Chawl, R.No.16, Kantilal Compound, Jijamata Marg, Andheri (E), Mumbai, being the mother in law and husband of Smt.Jayshree Sharad Ajgaonkar did aid

and abet each other in subjecting mental cruelty your willful conduct such as frequent physical assault and abuses with a view to coercing her to meet your unlawful demand for money to be brought from her parental house and which was of such a nature that drove her to commit suicide and she did thereby commit suicide on 23/11/90 at about 3.30 p.m. by setting herself ablazed and you did thereby commit an offence punishable u/s.498-A read with 114 of IPC and within my cognizance."

5. The charge which is amended on the basis of the order impugned reads thus :

"Firstly : That from 31-12-1988 till 23-11-1990 you accused No.2 Sharad being the husband and accused No.1 Madhuri being the mother in law of Jayshree in furtherance of your common intention subjected the said Jayshree to cruelty by your wilful conduct which was of such a nature as is likely to drive Jayshree to commit suicide and harassment with a view to coercing her to meet your unlawful demand for money and thereby committed an offence punishable u/s.498-a read with 34 of IPC and within my cognizance."

6. The amendment relates only to the first charge and other two charges framed originally have not been altered. P.W.No.1 Smt.Laxmi Govind Salgaonkar is the mother of the deceased. She has described one incident of assault on the deceased by the Applicant No.2. It must be noted here that the date of marriage between the Applicant no.2 and the deceased is 31st December 1988 and on 23rd November 1990 the deceased set herself ablaze and 24th November 1990, she succumbed to 100% burn injuries. P.W.No.3 Ramesh is the brother of the deceased. In his examination in chief he has stated that there used to be quarrels between the deceased and her mother-in-law i.e. the Applicant No.1 after her marriage. P.W.No.4 Mrs.Sayali Narvekar who is the cousin of the deceased stated that all along the deceased Jayshree used to complain to her that the Applicants were demanding money to buy a room and since she was not in a position to give money, the Applicants used to harass her. Ms Renuka Hosmane who is the Special Executive Magistrate has been examined by the prosecution to prove the dying declaration of the deceased. She deposed that the deceased told her that she was harassed by the Applicants and they were frequently assaulting her and demanding money. Thus, after going through the dying declaration of the deceased, it is apparent that the allegations of commission of offence under section 498-A were not confined to the period between July 1990 to 23rd November 1990 but the said allegations were relating to the period

starting immediately after the marriage between the Applicant Nos.2 and the deceased. In the impugned order, the learned Trial Judge has therefore recorded that his predecessors wrongly mentioned a particular period while framing the first charge. In my view, no fault can be found with the order impugned which is based on material available on record of the case. There cannot be prejudice to the Applicants as the learned Additional Sessions Judge has permitted the Applicants to recall, examine and cross-examine the witnesses on altered charge.

7. Hence Revision Application is rejected.

JUDGE